
(2024) 04 CESTAT CK 0012

Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Case No: Service Tax Appeal No. 51884 Of 2017

M/S Madhur Parcel Services Pvt
Ltd

APPELLANT

Vs

Commissioner Of C & C. Excise

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Finance Act, 1994 - Section 72, 73(1), 78

Hon'ble Judges: Dilip Gupta, President; P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Z. U. Alvi, Jaya Kumari

Judgement

P. V. Subba Rao, Member (T)

1. M/s Madhur Parcel Services Private Limited [The appellant] filed this appeal to assail the order in appeal dated 05.09.2017 passed by the

Commissioner (Appeals), Bhopal whereby he upheld the order in original 31.03.2017 passed by the Joint Commissioner and rejected the appeal filed by the appellant.

2. The appellant is registered with service tax department and has provided taxable services and has been paying service tax under the categories of

“goods transport agency” service and “storage and warehouse” service. It has also been availing the benefit of the CENVAT credit under

CENVAT Credit Rules, 2004[CCR]. It is a limited company promoted by Shri Mohan Lal Kotwani who also has three other businesses in the name

of Madhur Courier Services, Madhur Communications, Damru Express which were rendering courier agency services. The appellant declared itself to

be a provider of "cargo handling services" to the income tax department, while it declared itself as goods "transport agency services"

provider to the service tax department. Therefore, inquiries were initiated by the Department. It was found that another sister company M/s Madhur

Express Private Limited was issuing a 6 digit docket number in a sticker which is used by the appellant and other sister companies for centralized

tracking. It was also found that the appellant was not registered as transporter under Carriage of Goods Act and in the documents issued by the

appellant to its customer, the vehicle number by which the goods were transported, the details of the goods transported, person liable for paying

service tax etc., were not being mentioned. However, while booking the consignments the appellant has been obtaining a declaration from its clients to

the effect that "consignment did not contain personal mail, currency notes, jewellery, contraband etc". Goods such as personal mail, currency etc.,

cannot be carried by couriers. It, therefore, appeared to the department that the appellant had misclassified its courier services as "goods transport

agency services" to avail the benefit of abatement under an exemption notification.

3. In several cases the amounts charged by the appellant from its clients were indicated as inclusive of pickup and delivery charges. In other words,

according to the department the appellant was rendering the services of picking up the package from consignors and delivering it to the consignees,

which is in essence a courier service.

4. A show cause notice dated 09.08.2016 was issued to the appellant covering the period from October, 2010 to March, 2015 alleging that the

appellant had misclassified its taxable service as "goods transport service" which is actually "courier service" and evaded payment of service

tax of Rs. 53,92,677/- which was proposed to be recovered along with interest and impose penalty. The reasons for invoking extended period of

limitation and imposing penalty under section 78 of the Finance Act, 1994 recorded in paragraph 15 of the show cause notice is as follows:

" 15. The noticee has indulged in deliberate misclassification of the taxable service to claim abatement which otherwise is not available to them and

suppressed the taxable income from the ST-3 with intent to evade service tax. As the Noticee has consciously involved in suppression of facts and misclassification of taxable service both with intent to evade service tax, larger period for demanding and recovering service tax as envisaged in proviso to section 73 (1) is invokable in this case. By such misdemeanor they also have rendered themselves liable for penalty action under section 78 of the Finance Act, 1994.â€

5. These proposals were confirmed by the Joint Commissioner through the order in original and upheld by the Commissioner (Appeals) by the impugned order.

6. On behalf of the appellant learned counsel made the following submissions:

(i) The appellant is a off shoot of M/s Madhur Courier Services Pvt. Ltd which is engaged in courier services while the appellant is engaged in providing goods transport agency services;

(ii) The Commissioner (Appeals) was not correct in holding that while booking the parcels the customer was not aware of the modes of transport. The booking slip indicates mode of transport as surface transport. The appellant has its own fleet of trucks;

(iii) The Commissioner (Appeals) relied on the fact that the appellant undertakes door-to-door delivery on extra charges and, therefore, held that the service rendered by the appellant was of courier and not GTA. Effectively, all goods transport agencies deliver consignments from door to door;

(iv) The fact that the appellant was using the tracking facility provided by a sister company M/s Madhur Express Private Limited should not make its service as it courier service;

(v) The appellant has 12 short haulage motor vehicles TATA 407/709 which are registered as commercial vehicles;

(vi) The appellant issues booking-slips/consignment notes and if the consignment has a full truck load it also mentions its vehicle number. Otherwise, the appellant mentions other details such as consignor, consignee, name and quantity of the goods number of packages etc.,

(vii) The declaration which it obtains from every client that consignment does not contain personal mail, currency notes, jewellery, contraband etc.,

does not establish that the services rendered by it were courier services;

(viii) In view of above, the appellant's service characteristics is "goods transport agency services" and it cannot be considered as "courier services";

7. Learned authorized representative appearing for the department supports the impugned order and asserts that the appellant was rendering courier services and demand needs to be upheld.

8. We have considered the submissions advanced by both the sides and have perused the records.

9. The undisputed facts are that the appellant was transporting a large number of small consignments for its clients and was issuing booking slips.

Before issuing the booking slips it was getting an undertaking that "the consignment does not contain personal mail, currency notes, jewellery contraband etc.", which is a standard declaration for courier services because the courier companies are barred from carrying these as a part of courier packages.

10. It is also not in dispute that the appellant was delivering the goods door to door in many cases. The clients, in vast majority of the goods, also did not know in which vehicle the goods will be carried. In some cases, where the consignment is sufficiently large to fill the entire truck, the appellant is also giving the truck number in its booking slip.

11. It is also not in dispute that the appellant is using the tracking number generated by a sister firm for all its consignments like its other sister courier companies.

12. In this factual matrix, we find that the services rendered by the appellant have all the essential characteristics of courier service and not of "goods transport agency service".

13. However, we also find that the appellant could have entertained a belief that they were classifiable under the "goods transport agency service" and, accordingly, classified its service, paid service tax and filed returns. Classification of the service is a part of a self-assessment by the appellant. The self-assessment is subject to scrutiny and if necessary best judgment assessment under section 72 by the officer and the appellant had

been filing returns. It is the responsibility of the officer to scrutinize them. Wherever the appellant had not filed returns or not assessed service tax

correctly, it is the responsibility of the officer to initiate best judgment assessment within time from the date of filing of return or the last date for filing

the return for a particular quarter. Had this been done, the fact that the appellant qualified its services as "goods transport agency service", while

it has all the characteristics of a "courier service", would have come to light and demands could have issued within time.

14. In our considered view, the ground for invoking extended period of limitation and imposing penalty under section 78 that the appellant had

"indulged in deliberate misclassification of taxable service" is not correct. The assessee is expected to classify its services and pay service tax as

per its understanding. It was the job of the officer to scrutinize the returns and if no return is filed by due date, it was his responsibility to call for its

records and complete the best judgment assessment. This was not been done in this case and the delay occurred in raising a demand beyond the

normal period of limitation for this reason. The extended period of limitation under the proviso to section 73(1) of the Finance Act could not have been

invoked.

15. In view of above, we uphold the classification of the service under the "courier service" but set aside the demand for extended period of

limitation and a penalty imposed under section 78. The demand for normal period of limitation is upheld with interest thereon.